(1902) 64 N. J. Eq. 736, that the husband probably compromised the matter. The case of *Moore* v. *Moore*, supra, shows clearly that Vice Chancellor Emery's view of *Lynde* v. *Lynde* is not that held in New York.

INSULT A JUSTIFICATION FOR ASSAULT IN LOUISIANA.—Early systems of law at a time when the criminal element played a very large part, principally because of the unruly character of the peoples for whom they were framed, Maine's Ancient Law 356, frowned upon anything tending to a breach of the peace, and the earliest victory of the law was gained when relatives of a man slain were compelled to make a request for blood money before resorting to violence. Perry, Com. Law. Pl. 64. So, when civil actions for personal injuries were differentiated from purely criminal actions, persons were for the same reasons encouraged to seek legal redress wherever personal vengeance would tend to a breach of peace, for the king "will that every one should have recourse to judgment rather than to force." Britton, i. 115-6. Extreme examples of this tendency to substitute courts of law for private retaliation appear in the occasional instances that may be found of redress for insults. Ayliff's New Pandect 595, citing Digest XLVII, 10; Bell's Principles of Law of Scotland 2043 (o); 27 Ass. 134, pl. 11; 17 Ed. IV, 3, pl. 2; 36 Hen. VI 20b, pl. 8. States went so far in requiring men with grievances to seek legal redress that even in Bracton's time he who had slain another in self defense needed the royal pardon. 2 Pol. & Mait., Hist. Eng. Law, 477. It was impossible to deny all right of self help, but the rules regulating the right, as seen by a study of the law of assault and battery, were technical and slow in developing. Compare 2 Pol. & Mait. 476-482, with *Dean* v. *Taylor* (1855) 11 Ex. 68. It was the tendency of men of early times to take the impulses of the injured person as the proper measure of the vengeance he was entitled to exact; and imitate literally the probable rise and fall of his passions in fixing punishment. Maine's Ancient Law 368. Therefore, it seems that we should be justified in assuming that in the early history of torts, when the laws of assault and battery were little developed, and when an insult was still an actionable wrong, an insult alone would justify an assault with force, or at least prevent a recovery for the damages inflicted.

It is surprising, however, to find a court holding such to be the law at the present day. In Louisiana it has just been decided that one who, in the course of an argument about wages, calls his employer a robber, and is knocked down in consequence, cannot recover for the injuries inflicted upon him. *Massett* v. *Keff* (1906) 41 So. 330. This case is the last of a series of four, all applying the same doctrine. The first one was a case where the plaintiff while drunk tried to shoot the defendant, who thereupon shot the plaintiff but not in self defense. It was there laid down by the court, citing no authorities, that "the jurisprudence of this state is well settled that one who is himself in fault cannot recover damages for a wrong resulting from such fault, although the party inflicting the injury was not justified under the laws." *Vernon* v. *Bankston* (1876) 28 La. Ann. 710. No authority for such a proposition can be found in either the common or the civil law. There is nothing suggestive of the

rule in the Louisiana Code, nor, so far as can be ascertained, in the Spanish or French laws. In Scotland an insult is actionable, and yet it is firmly established that verbal injury is not a justification for assault, going only to the mitigation of damages. Bell's Principles §§ 2032, 2043. In the Roman Law an insult was an actionable injury, but it was a question upon which there was a conflict of opinion, if an insult in return, although of like nature, did not subject the second person to an action as well as the first, Ayliff's New Pandect 595, and it is elsewhere laid down that a person was free from liability for an assault, only when he could not otherwise defend himself. Dig. IX. 2. 45. It seems clear, therefore, that the doctrine of Louisiana is a product indigenous to that state, in conflict with all developed systems of law.

A possible explanation may be found in the legal history of the state. At the time of the cession of Louisiana to the United States, four distinct bodies of Spanish civil law were in force in the territory. These were abrogated in 1808 in so far as inconsistent with the Civil code then adopted, but were not entirely repealed until 1828. Even since this date, the old Spanish law has necessarily played an important part as the natural basis of that extensive interpretation required by the generality of expression in the Code. See 22 Am. Law. Rev. 890–902. It was not strange, therefore, in view of the early scarcity of copies of the Spanish law, see Am. Law. Rev. supra, p. 895, and the especial looseness of expression in that part of the Code which deals with Offenses and Quasi-Offenses, that a judge should in a case of first impression reflect the sentiments of his community. If it be granted that the judge was so guided when in *Vernon* v. *Bankston*, supra, he declared it to be the "jurisprudence" of the state that "one who is himself in fault" cannot recover damages for a resulting wrong even where the latter is not justified in law, it seems that the court in *Massett* v. *Keff*, supra, simply took one logical step forward in response to the sentiment of the community when it declared that an insult was such a "fault" as to prevent recovery. In this connection it is interesting to note the codification of "The Unwritten Law" by a Louisiana jurist in 36 N. Y. Law Journal No. 23; 68 Alb. L. J. 262.

LIMITATIONS ON THE DOCTRINE OF CONSTRUCTIVE ADVERSE POSSESSION.—The doctrine of constructive adverse possession is a purely American growth, due to native conditions. It does not obtain in England, because in that country all land is divided into known parcels, from which it results that a disseisor claims a known parcel. In America the general, though not the universal doctrine is, that possession of a part of a tract of land, under color of title, and with a claim of right to the whole tract, amounts to a possession of every part of the whole tract. *Hicks* v. *Coleman* (1864) 25 Cal. 122. The color of title, by which is generally meant a written instrument valid on its face, *Thompson* v. *Burbans* (1879) 79 N. Y. 93, 99, defines the extent of the possession claimed and it is presumed that the extent of paper title is as visible and notorious as actual possession. The theory of the general doctrine is, that in an undeveloped country it would be impossible to reduce to possession the whole of the land which the deed purports to convey; and just as the